IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 431 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NAVANAGAR COOP BANK LTD

Versus

SV METAL UDHYOG, THROUGH PARTNER,

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Appearance:

M/S THAKKAR ASSOC. for the Petitioner.

MR SHIRISH JOSHI for Respondent No. 1

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25/09/2001

ORAL JUDGEMENT

The petitioner bank filed a Lavad suit before the Board of Nomiees for the recovery of certain amount of loan given to the respondent on 25th October, 2000. On the same day, ex parte ad-interim order was passed and also an order was also passed for appointment

of Court Commissioner to make an inventory and attach the property of the respondent. The commissioner was directed to submit his report on or before 9.11.2000. It is observed in the order itself that if the respondent requires to take up the matter urgent, it can move the Board of Nominees. On 26th October, 2000, the Court Commissioner issued the notice to the respondent requiring it to be present on 27th October, 2000 at the place mentioned therein. The notice was served on the same day on the respondent. The respondent remained present on 27.10.2000 and also co-operated the Commissioner in making inventory of articles. As the work of inventory was not completed on that day, the Commissioner required the respondent to remain present on 29th October, 2000 but the respondent did not turn up on 29th October, 2000. As the keys of the unit were not given to the Commissioner, he placed another lock and sealed it. He filed compliance report on 9th November, 2000 in compliance with the order dated 25th October, 2000.

2. The contention of the learned counsel for the petitioner is that the respondent filed Appeal NO. 46 of 2000 before the Tribunal against the order dated 25th October, 2000 after the period of limitation. It is stated that no notice was issued by the Tribunal on the application for condonation of delay and the stay application. Still however, the Tribunal granted interim order in terms of para 3(A) on 15.1.2001. The order of the learned Nominee dated 25.10.2000 was stayed subject to the deposit of Rs.50,000/- lacs on or before 7th December, 2000 and subject to the compliance of the order before the date and one advocate was appointed as a Court Commissioner in terms of para 3(A) for opening the locks put up by the bank and the officers of the bank were directed to co-operate with the Court Commissioner. The respondent was also directed to file reply urgently, the parties were directed to co-operate and the Board of Nominee was also at liberty to proceed with the bi-parte hearing. This order has been therefore, challenged by means of this petition.

3. This court has passed the following order on January 17, 2001.

> "Rule returnable on 12.2.2001. In the meantime, there shall be stay in terms of para 16(B). Direct service is permitted."

The prayer para 16(B) of the petition reads as under:

"Your Lordships be pleased to stay the implementation, operation and execution of the order dated 15.1.2001 passed by the Gujarat State Co-operative Tribunal, Ahmedabad in Appeal No.45/20001 pending admission hearing and final disposal of this petition.

4. The contention of the learned counsel for the petitioner is that the appeal filed by the respondent before the Tribunal was beyond the period of limitation and the Tribunal has not issued notice on the application for condonation of delay and has straightaway passed the interim as stated above and without giving any opportunity of hearing to the petitioner and more particularly when there was no irreparable loss as if the petitioner would have been called upon to answer before passing the order within few days. But without passing any order for issuance of the notice on the application for condonation of delay, the interim order has been passed by the Tribunal which is illegal, unsustainable in the eye of law and against principles of balance of convenience. The second contention of the learned counsel for the petitioner is that the respondent was given an opportunity to move the Board of Nominees though the orderon 25th October, 2000 was passed for appointment of the commissioner and for attachment of the property. But appropriate order could have been passed on or before 9th November, 2000 if the respondent would have appeared before the Board of Nominee. But the respondent had not appeared before the Board of Nominee and has straightaway filed appeal before the Tribunal and that appeal is barred by alternative remedy available before the Board of Nominee itself. As such the appeal filed by the respondent is not tenable in view of the availibility of alternative remedy.

5. I have heard the learned counsel for the parties. As the appeal is already pending before the Tribunal, it is not advisable for this Court to make any observation on the issue as to whether appeal is maintainable or not. In that respect, appropriate order can be passed by the Tribunal itself. In the facts and circumstances of this case, I think it proper to set aside the impugned order passed by the Tribunal and remand the matter to the Tribunal for passing appropriate orders. Hence, the impugned order dated 15.1.2001 in Appeal No.45 of 2001 passed by the Gujarat State Co-operative Tribunal, Ahmedabad is hereby quashed and set aside. The matter is remanded to the Tribunal to pass appropriate orders afresh on the issue regarding

maintainibility of appeal as well as interim relief within a period of two weeks from the date of presentation of the certified copy of this judgment. Till appropriate orders are passed by the Tribunal in compliance with this order, the interim order passed by this Court will continue. Both the parties would be at liberty to raise their legal as well as factual arguments before the Tribunal and the Tribunal will decide the same in accordance with law after giving an opportunity of hearing to the parties. Rule is made absolute accordingly with no order as to costs. In case, the Tribunal thinks it proper, it will finally decide the appeal itself within the afoersaid stipulated period.

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